There is a sharp distinction between malicious prosecution and false imprisonment. See SALMOND, TORTS, 2 ed., 351. In the former, malice and lack of probable cause must be shown. *Abrath* v. *N. E. Ry. Co.*, 11 Q. B. D. 440. In the latter, even honest mistake is in general no defense. See *Lock* v. *Ashton*, 12 Q. B. 871. The defendant in this case having probable cause is not liable for malicious prosecution. However, an arrest on suspicion of felony without warrant is *primâ facie* wrongful, and must be justified by showing authority to act, and reasonable action. A constable, having authority to act by virtue of his office, need only show that he acted reasonably. *Beckwith* v. *Philby*, 6 B. & C. 635. A private citizen has such authority only when a felony has in fact been committed. See 2 HALE P. C. 78; *Siegel Cooper Co.* v. *Connor*, 70 Ill. App. 116. In the principal case, the plaintiff's arrest for the crimes committed would then have been justified. But unless a party acts in reliance upon a justification, it cannot be set up. *Regina* v. *Dadson*, 4 Cox C. C. 358. It would seem to follow that the defendant can justify only by proving the crime charged; and that failing in this, he is liable for false imprisonment.

FALSE IMPRISONMENT — CIVIL LIABILITY OF MINE OWNER FOR FAILING TO BRING EMPLOYEES UP FROM MINE. — The plaintiff, employed in the defendant's mine, in breach of his contract, quit work at noon, and the defendant refused to bring the plaintiff to the surface, although notified of his desire to leave the mine. The plaintiff brought an action for false imprisonment. *Held*, that the plaintiff cannot recover. *Herd* v. *Weardale Steel, C. & C. Co.*, [1913] 3 K. B. 771.

The principal case proceeds on the ground that there was no act of imprisonment. The omission to bring the plaintiff up from the mine cannot be so linked with the previous act of letting him down as to constitute a single act of imprisonment; for the acts of commission and omission are too far apart in time and nature to be conceived of as one. *Hill* v. *Caverly*, 7 N. H. 215. Nor is the defendant's position analogous to that of a locomotive engineer, whose omission to exercise control over the moving force is substantially a misfeasance. See *Kelly* v. *Metropolitan Ry. Co.*, [1895] 1 Q. B. 944. A jailer, confining his prisoner longer than his legal sentence, has been held liable for false imprisonment. *Withers* v. *Henley*, Cro. Jac. 379; *Mee* v. *Cruikshank*, 86 L. T. Rep. N. S. 708. But practically the prison routine must cause the jailer to commit new misfeasances. Furthermore, in the principal case the prior act of lowering was not tortious because of the plaintiff's consent. See *Kirk* v. *Garrett*, 84 Md. 383, 35 Atl. 1089. Thus the court seems clearly correct in holding that there was no false imprisonment.

The facts suggest the possibility of working out a relational duty on the part of the defendant to bring his employee to the surface. It has been held that a railroad company, having sent a gang of men to an isolated region in very cold weather, was bound to transport them to some point where they could get food and shelter. *Shoemaker* v. *St. Paul & Duluth Ry. Co.*, 46 Minn. 39, 48 N. W. 559. Recovery has also been allowed where the superintendent of a coal mine failed to take proper measures to save the lives of miners caught in the mine when a fire had accidentally broken out. *Bessemer Land & Improvement Co.* v. *Campbell*, 121 Ala. 50, 25 So. 793. In the principal case, the plaintiff, by the nature of his employment, was placed in a situation where his personal liberty was dependent on a means of exit within the defendant's exclusive control. It is possible to argue that not only the interest of personal safety but that of personal liberty should be secured by this relational duty of the master. On this supposition it would follow, from the cases cited, that a duty existed to bring the plaintiff up from the mine. Although the contract relation between the parties is at an end, as long as the dependent situation created by the employment exists, the employer must perform his relational duties.

Packet Co. v. *McCue*, 17 Wall. (U. S.) 508. For this reason the fact that the plaintiff had broken his contract is not here material. In any event such an employee could only demand to be taken up when reasonably convenient, in view of other mine operations — but this was the fact in the principal case.

ILLEGAL CONTRACTS — EFFECT OF ILLEGALITY — DEFENSE TO PURCHASER UNDER CONTRACT FOR ILLEGAL SALE. — The defendant agreed to buy "renovated" butter of the plaintiff, under a contract calling for a series of shipments. The evidence justified the inference that title would pass outside the jurisdiction at the time of shipment. After accepting and paying for several consignments, the defendant refused to receive any further deliveries. In an action on the contract, the defendant set up the failure of the plaintiff to mark his shipments in compliance with a local statute providing that "No person, etc., shall manufacture, sell, or offer for sale, or have in his possession with intent to sell butter known as process butter, unless the package in which it is sold is marked 'renovated butter.' All process butter shipped from other states shall be subject to the same regulations." (2 REM. & BAL. WASH. CODE, § 5447 e.) *Held*, that the plaintiff may recover in spite of the statute. *Armour & Co.* v. *Jesmer*, 136 Pac. 689 (Wash.).

The result is unimpeachable on the facts of the case. The contract would be performed in a jurisdiction beyond the operation of the statute. *Braunn* v. *Keally*, 146 Pa. 519, 23 Atl. 389. The statute makes illegal the selling and the possession with intent to sell, but says nothing as to a shipment into the state in pursuance of a sale. But, if the court is correct in assuming that the shipment of misbranded butter would be covered by the statute, it would seem that the plaintiff should not recover. There would have been no recovery for the price if the sale had been effected in the unlawful manner. *Forster* v. *Taylor*, 5 B. & Ad. 887; *Pray* v. *Burbank*, 10 N. H. 377. And the previous method of shipment overcomes the presumption that he would choose the lawful course sufficiently to justify the defendant in refusing to proceed. But the court reasons that the defendant may not have the benefit of this defense as to that portion of the contract which remained executory, because notice was not given in time to enable the plaintiff to perform lawfully. If the defense proceeded on the idea of relief to the defendant, this position would be tenable. But a defense constituted primarily for the benefit of the public is not forfeited in this way. See *Church* v. *Proctor*, 66 Fed. 240, 244. It is therefore submitted that if the statute covered the matter, the defendant was under no duty to receive the goods for the refusal of which action was brought. *Buxton* v. *Hamblem*, 32 Me. 448. See *Gallini* v. *Laborie*, 5 Durnf. & East 242.

INTERNATIONAL LAW — LEGATIONS AND DIPLOMATIC AGENTS — IMMUNITY OF DIPLOMATIC AGENTS FROM SUITS: WHETHER WAIVED BY UNCONDITIONAL APPEARANCE. — The defendant, an attaché of a foreign legation in England, had entered an unconditional appearance in a civil action regarding an undertaking in his private capacity. It did not appear that the defendant knew of his privilege of exemption from suit. *Held*, that the privilege was not waived by appearing. *In re Republic of Bolivia Exploration Syndicate*, 30 T. L. Rep. 78 (Ch. Div., Nov. 12, 1913).

It has long been a settled rule of law that foreign diplomatic representatives are exempt from all local processes in the country to which they are accredited. 1 KENT'S COMMENTARIES, 15, 38. The same immunity is given not only to an ambassador himself, but to his subordinates, family, and servants as well. See *Respublica* v. *De Longchamps*, 1 Dall. (Pa.) 120, 125; 1 HALLECK, INTERNATIONAL LAW, 354. It extends so far that the local law does not punish the ambassador, even when he conspires against the sovereign to whom he is accredited. See 1 WESTLAKE ON INTERNATIONAL LAW, 266. Whether or not